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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,311	03/22/2004	Matthew F. Ogle	3126.01US03	7280
63274 7590 09/29/2009 DARDI & ASSOCIATES, PLLC 220 S. 6TH ST. SUITE 2000, U.S. BANK PLAZA MINNEAPOLIS, MN 55402				
EXAMINER				
NGUYEN, VI X				
ART UNIT		PAPER NUMBER		
3731				
MAIL DATE		DELIVERY MODE		
09/29/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/806,311

**Applicant(s)**

OGLE, MATTHEW F.

**Examiner**

Victor X. Nguyen

**Art Unit**

3731

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 and 21-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 21-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date 11/20/2008
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. This office action is in response to communication filed on 2/23/2009.

Claims 1-14 and 21-29 remain pending in this application.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 and 11-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Phillips et al 5,972,505.

Claims 1 and 11: Phillips et al disclose absorbent articles comprising: a plurality of fibers comprising a polymer (see col. 17, lines 35-52) and having surface capillaries characterized by one or more grooves (figures 8-12, col. 15, lines 1-20) along the length of the fiber, wherein the fibers are bound to the device and have a deployed configuration that fills the lumen of a vessel having a diameter corresponding to that of a human vessel in the form of a porous structure (col. 14, lines 47-51) that blocks a substantial majority of particulates with a diameter greater than 0.2 mm (see Phillips, claim 17 discloses the dimension of the fiber).

Claims 2-4: Phillips et al disclose the fibers comprise a hydrophilic polymer (see col. 9, lines 37-43), wherein the fibers comprise polyester and bioresorbable polymer (see col. 14, lines 37-51, col. 17, lines 35-40).

Claims 5-8: Phillips et al disclose the fibers are within a fabric (see col. 1, lines 35-37), wherein the fibers have a curled configuration (figures 10, 12) at body temperature, and wherein the fibers are in a bundle (fig. 19, col. 24, lines 28-35).

Claim 12: Phillips et al disclose the device further comprising a biocompatible adhesive (see col. 10, lines 50-67).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillips et al in view of Tu et al 5,061,276.

Phillips et al disclose the invention substantially as claimed except for the fibers are grafted with a second polymer which is a hydrogel. However, Tu et al teach that the fibers are grafted with a second polymer which is a hydrogel (figures 7, 8, col. 19, lines 30-33). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Phillips with the fibers are grafted with a second polymer which is a hydrogel as taught by Tu in order to provide a desired degree of elasticity while maintaining a desired degree of porosity of the fiber.

Claims 13-14, 21-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillips et al in view of Macoviak et al 6,395,014.

Claims 13, 14, 23, 24, 26 and 28-29, Phillips et al disclose the invention substantially as claimed except for the device further comprises a tether which is a guidewire. However, Macoviak et al teach a tether which is a guidewire (figure 1, item 104). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Phillips with the tether which is a guidewire as taught by Macoviak in order to provide a tool to facilitate the removal of the filter. As to claims 21, 22, 25 and 27, Phillips et al disclose the invention substantially as claimed (see fig. 19, col. 24, lines 28-35).

#### ***Response to Arguments***

4. Applicant's arguments filed 2/23/2009 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, AnhTuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/VN/

/Anh Tuan T. Nguyen/  
Supervisory Patent Examiner, Art Unit 3731  
9/28/2009